

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 Before The Honorable Edward M. Chen, Magistrate Judge

4
5 IN RE: TESLA INC. SECURITIES)
6 LITIGATION.)

7) No. C 18-04865-EMC
8)
9)

10 San Francisco, California
11 Thursday, March 10, 2022

12 TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
13 RECORDING 2:00 - 2:31 = 31 MINUTES

14 APPEARANCES:

15 For the Plaintiffs:

16 Levi & Korsinsky LLP
17 1101 30th Street NW, Suite 115
18 Washington, D.C. 20007
19 (202) 524-4290

20 BY: NICHOLAS PORRITT, ESQ.

21 BY: ADAM MCCALL, ESQ.

22 BY: ADAM APTON, ESQ.

23 For the Defendants:

24 Quinn Emanuel Urquhart &
25 Sullivan LLP
51 Madison Avenue, 22nd Floor,
New York, New York 10010
(212) 849-7000

BY: ALEX SPIRO, ESQ.

BY: MICHAEL LIFRAK, ESQ.

BY: KYLE BATTER, ESQ.

1 Transcribed by: Echo Reporting, Inc.
2 Contracted Court Reporter/
3 Transcriber
4 echoreporting@yahoo.com
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Thursday, March 10, 2022

2:00 p.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: The Court is now calling In Regarding
5 Tesla Inc. Securities Litigation, Case Number 18-04865.

6 Counsel, please state your appearance for the record,
7 beginning with the plaintiff.

8 MR. PORRITT (via Zoom): Good afternoon, your
9 Honor. Nicholas Porritt of Levi and Korsinsky on behalf of
10 plaintiff Glen Littleton and the class. With me, Adam
11 McCall and Adam Apton, also of Levi and Korsinsky

12 THE COURT: All right. Thank you, Mr. Porritt.

13 MR. SPIRO (via Zoom): Good afternoon, your Honor.
14 This is Alex Spiro, and I'm joined by Michael Lifrak and
15 Kyle Batter on behalf of the defendants.

16 THE COURT: Thank you, Mr. Spiro.

17 Let's talk about falsity. And I briefly viewed the
18 slides that the plaintiffs have submitted. I don't think we
19 have time, and I don't need to go through all those. You
20 use those to illustrate if you want at some point. But it
21 seems to me, it's not factually very complicated. What the
22 legal conclusion is, perhaps we can debate.

23 But take the first statement. "Am considering taking
24 Tesla private at 420. Funding secured."

25 We know that in fact to lease in the usual sense of the

1 word "secured," funding had not been secured.

2 My understanding is that the discussions with the Saudi
3 investors were still -- there was obvious interest, but
4 there had been no term sheet. There had been no discussion
5 about ownership structure, percentage. No discussion of
6 price, as I recall. No discussion about conditions.

7 A lot of things hadn't been discussed. It seemed quite
8 preliminary, even though there was a strong indication of
9 interest.

10 But the fact that a number was put on the table in this
11 tweet, an actual number, 420, and "funding secured" seems to
12 imply something, something more than "Oh, I've got somebody
13 interested."

14 I understand there's some softness around that. And
15 some of the commentators, you know, may have commented that,
16 well, it could be a strong verbal commitment, maybe some
17 just initial term sheets agreed to or something in that
18 neighborhood.

19 But even that softness -- I guess I want to hear from
20 the defense, what else could it mean, if it means anything
21 at all, "funding secured"? It must mean something.

22 MR. SPIRO: Well, it can mean that there is a
23 supposition, a principal at this point that funding is not
24 going to be an issue. That I'm considering doing this. I'm
25 considering taking Tesla private at 420. That statement I

1 think is demonstrably true and it's not claimed to be false,
2 right? He is, in the present tense, considering doing this.

3 And so all he's saying is the issue here or the issue
4 at bay here is that you don't have to worry about funding.
5 I'm not here to talk about funding. Funding is secured.
6 Funding is not an issue.

7 THE COURT: Well --

8 MR. SPIRO: And it was --

9 THE COURT: -- it's not an issue because -- not
10 that I'm not interested or we don't need it. It's because
11 it's been, quote, secured. It's an issue because I got it,
12 it's in the bag or something like that.

13 MR. SPIRO: Well, there's contemporaneous
14 statements in this case and evidence that supports that
15 there was a handshake deal at that meeting. So it certainly
16 doesn't have -- I mean the only way that the plaintiffs can
17 survive on their theory here is if it means essentially
18 legally binding term sheet.

19 That's not what he said. What he said was secured. He
20 has a handshake deal leaving that meeting and it could be
21 secured in any number of other ways.

22 Your Honor --

23 THE COURT: But what was the handshake deal?

24 MR. SPIRO: Funding is not an issue. We have
25 unlimited money. We've already looked at this company.

1 We've seen the diligence because it's a public company.
2 We've already invested a billion dollars and up to our limit
3 of what we can invest. It's not -- it doesn't require
4 disclosure.

5 We've been courting you for years and this is "We're
6 ready to move forward. Let's go."

7 THE COURT: But was there discussion about 420 as
8 the purchase price?

9 MR. SPIRO: No, but there's been ample evidence in
10 this case that 420 is where he's considering taking it
11 private, right --

12 THE COURT: "He" being Mr. Musk?

13 MR. SPIRO: Correct. And that --

14 THE COURT: But not necessarily on the other side
15 of equation. It takes two to tango.

16 MR. SPIRO: Well, again, we're starting to read in
17 other commitments to this tweet that I don't know is
18 necessarily present, your Honor.

19 THE COURT: Well, but you use the word "handshake
20 deal." A deal means there's an understanding. And if you
21 don't even have an understanding of price or what the
22 structure is, whether they're going to demand 30 percent
23 ownership, 51 percent ownership or something else, how can
24 there be a, quote, "deal," even if it's just a handshake
25 deal?

1 MR. SPIRO: Well, this is -- I'm repeating to you
2 what one witness said under oath, which is that there was
3 a -- "handshake agreement" was the term. Handshake
4 agreement is what was testified to under oath.

5 Okay. So it doesn't have to be a formal deal. It
6 doesn't have to be a term sheet deal. It doesn't have to
7 have all terms worked out.

8 It's analogous to the analogy that your Honor heard at
9 motion to dismiss, which is that you are told by your bank
10 that it's not going to be a problem for you to get a
11 mortgage, mortgage is not going to be an issue.

12 And so you go to buy the house and you say, "I don't
13 need a condition." That's not going to be an issue. You
14 don't know the rate, you don't know the term of years, you
15 don't have a binding contract. You don't have anything, but
16 you know it's not going to be an issue.

17 And so there's nothing -- a reasonable jury could
18 conclude that all this means is that funding is not an
19 issue. Don't worry. You people I'm talking to, don't
20 worry, that's not the issue.

21 And we are focused on the PIF, but it's not the only
22 possible reason that he can or would want to say that.

23 And again, as your Honor pointed out, there are folks
24 in the marketplace who say unequivocally that this could be
25 a strong verbal commitment and could be less than that.

1 So that is affirmative evidence that reasonable people
2 at the time, seasoned people in the marketplace did not take
3 it to mean binding term sheet, which is what they really
4 have to allege in order to --

5 THE COURT: But even take the looser one. The RTC
6 Capital Markets article stating that "Elon's tone and
7 messaging regarding a potential transaction lead us to
8 believe there could be significant outside funding lined
9 up." "Lined up."

10 MR. SPIRO: Could be. Could be. Significant
11 funding lined up.

12 And then others say that it could be far less than
13 that, right? And that's Exhibit 33, among other places.

14 THE COURT: All right. So let me hear from -- I
15 don't know if it's Mr. Porritt or who on your team.

16 Why is it enough elasticity there -- I mean you've got
17 some evidence that some of the commentators are not reading
18 this too strictly. They're saying, well, it could be that
19 there's significant outside funding lined up or it could be
20 a strong verbal commitment with funds available, parties
21 willing to execute quickly, but it could be less than that.

22 That suggests a little bit of looseness there. Then
23 why isn't it enough -- maybe that just says, you know, we've
24 got enough interest in this thing that I'm not too worried.
25 We're going to get it one way or the other.

1 MR. PORRITT: Well, your Honor, I wanted to --
2 thank you, your Honor. Nicholas Porritt, again, on behalf
3 of the plaintiffs.

4 Your Honor, in the motion to dismiss order, rightly
5 identified that this is in the past tense. Funding is
6 secured. And your Honor has also make that point here today
7 as well.

8 So that delivers, suggests, and Joseph Fath, the
9 testimony we pointed to in our papers, the portfolio manager
10 for T. Rowe Price, noticed that it means secure. It means
11 it is in the bag. It is locked and loaded. It's ready to
12 go without condition.

13 Your Honor, while they think about -- while there's
14 reference to a verbal commitment or maybe less than that, I
15 don't think -- you cannot point to a single -- and
16 defendants have not and cannot point to a single market
17 participant who believes that that means that price has not
18 been discussed with any potential investors, that the amount
19 of funding is not being discussed with potential investors,
20 that the percentage, even the range of percentages is not
21 even agreed upon. It's anywhere between 80 and 20 percent
22 that might be arranged.

23 So it's one thing to say there's a little bit of
24 looseness there. It's another thing to say that this really
25 is illusory. There's been discussions and no more than that

1 is all that you can say at this particular point in time.

2 Another point that -- and just to raise a couple of
3 points that counsel for defense made, he talks about how PIF
4 had seen the diligence. There had been no due diligence.

5 One thing that is clear and undisputed out of the
6 meeting on July 31st between Elon Musk and a representative
7 of the Saudi PIF is that they wanted more information. And
8 Elon Musk himself admitted he agreed to give it to them but
9 then never did and that they couldn't go forward until they
10 got that information.

11 So it's just simply incorrect to say they had seen the
12 diligence and were ready to go there and back. That's just
13 not true.

14 In terms of what was actually discussed at that
15 meeting, we have no contemporaneous documents from Tesla.
16 We purely have Mr. Musk's testimony. The only
17 contemporaneous documents come from what is revealed from
18 the Saudi PIF, revealed in the text messages, Exhibit 121,
19 exchanged with Mr. Musk and then their notes taken at the
20 meeting, which we've submitted to your Honor, and they
21 clearly show a far more -- a willingness to explore a
22 potential transaction.

23 That is far as it has got.

24 And then the final, I think critical point here, when
25 talking about funding secured, is that Mr. Musk says very

1 clearly, as testified, that that funding secured refers to
2 PIF. He didn't speak to any other investors regarding this
3 transaction at this particular point in time before his
4 tweet on August 7th.

5 And yet he also admits and says -- you know, it's
6 undisputed that he had no intention of using the Saudi PIF
7 to fund the entire transaction, that he intended to cap it
8 at 20 percent, no more, at a maximum of 30 percent which
9 still left a large gulf. We don't know precisely how much
10 left because we still don't know and we never -- the team
11 never found out how much percentage of actual funding was
12 actually required to close this transaction because the
13 whole thing was so tentative and so pie-in-the-sky at this
14 point in time that he never had a clear idea how much money
15 he needed or would be needed.

16 So Mr. Musk by all means does feel optimistic about
17 there would be funding available if he put together a
18 transaction that people could then participate in. But he
19 was nowhere near saying that it was -- that's a long way
20 from saying secured.

21 THE COURT: All right. Let me ask defendants on
22 this second quote about the, quote, "investor support is
23 confirmed. The only reason why this is not certain is that
24 it's contingent on the shareholder vote."

25 Again, that suggest that everything -- similarly that

1 the investor support is lined up, ready to go, that it's
2 really just a matter of Tesla shareholders saying yes, that
3 there is no contingency on the other side of the equation.

4 Isn't that a fair reading?

5 MR. SPIRO: Yes, your Honor. I understand the
6 Court's question.

7 I just want to take a step back and point out that this
8 entire grouping of tweets, right, has to be looked at in
9 context and with each other, right? And so the entire
10 series of tweets -- and these are all on the same date, the
11 statements that we're talking about here. It starts with "I
12 am considering," meaning "I am not close to final," meaning
13 "Not everything is documented. I am just at this point
14 considering something," right?

15 So the idea that other things within this are loose is
16 presupposed by the way this starts. And so I do worry that
17 by dissecting too much, which is how the plaintiffs organize
18 their submission, we do miss the fact that context matters.

19 The second thing is, obviously the question is could a
20 reasonable juror read that in a different way. And as I
21 made the point with the funding secured, there is a -- and
22 as the Court said at the motion to dismiss stage, there is a
23 lay meaning to many things that is different than a formal
24 meaning, right? And so -- and lay meaning to any of these
25 things could mean something slightly differently than what

1 one's gut instinct is. And that's what the real question is
2 before the Court.

3 In terms of the second statement of issue, the other
4 thing I want to point out is the market reaction to both of
5 these statements is that when more information trickles into
6 the marketplace, the market does not react as if the market
7 has been misled or some bomb has been dropped.

8 THE COURT: And that goes to the reliance
9 question, which I want to get to right after this.

10 MR. SPIRO: It does, but the Supreme Court has
11 also said that it has to do with whether it can be used to
12 look at other elements of the case, right, so that it
13 doesn't have to just be limited to its all fours.

14 THE COURT: Although there was a -- if you're
15 going to say market reaction is relevant, there was market
16 reaction right after the 7th when the tweet was made.
17 Something happened.

18 MR. SPIRO: Well, there was. But our view is not
19 that that market reaction is necessarily to this funding
20 secured throwaway, don't worry about funding. None of Mr.
21 Musk's deals have ever had a funding issue.

22 Mr. Musk is in a position to personally fund, right?
23 They point out that Mr. Musk is talking about, "Oh, well,
24 the only investor I spoke to at that point was PIF."

25 Okay. Well, he had spoken to his board. We know that.

1 That's without dispute. He has great personal resources
2 that he can bring to bear. That's without dispute. So it's
3 just not as simple as they make it sound by cherry-picking
4 certain facts.

5 THE COURT: My point is if you're going to rely on
6 market reaction for the adverse inference, you've got to
7 take the good with the bad or the bad with the good.

8 MR. SPIRO: Fair enough, your Honor. And I would
9 put to the Court that the truth is, if the market reacted
10 based on this tweet, what they're reacting to is: I, Elon
11 Musk, am considering taking this private.

12 That's what matters in this tweet, not funding secured.
13 That's not what matters in this tweet. That's not the
14 gravamen of this.

15 It's Elon deciding that there's never been an issue
16 with funding any of his companies across any context.
17 That's not the issue. The issue isn't whether or not anyone
18 is going to be interested in funding him. And as you see,
19 at the end of the rainbow when this is all done, he did have
20 ample funding. It wasn't even close.

21 So the market is reacting to Tesla might go private, if
22 they're reacting to anything, because Elon might be taking
23 them private. Elon might be making a bid to make them
24 private.

25 So in terms of the investor support confirmed -- and,

1 again, you know, we can tease out what does "confirmed"
2 mean, what does "support" mean, is "investor" plural or
3 singular. These are questions for a jury. It is what's
4 their interpretation of those words in the same time frame,
5 in the same context as the tweet. And it's not --

6 THE COURT: Well, who else could "investor
7 support" be referring to in context besides the Saudi
8 investment group?

9 MR. SPIRO: So let's take that interpretation of
10 it. I don't concede that it's the only possible
11 interpretation a reasonable juror could have.

12 But if that's the case, then all he's saying
13 contemporaneously -- again, these are contemporaneous,
14 right? A jury would even have to find that you don't read
15 these various tweets together, that they're even independent
16 statements in and of themselves. We don't concede that.

17 So "funding secured, investor support confirmed,"
18 right? Okay. So there's an investor that's clearly behind
19 this and there's an investor that, you know, seems like he's
20 willing to do this is, is absolutely --

21 THE COURT: What about the only reason why it's
22 not certain that it's contingent on shareholder vote. That
23 means one contingency shareholder vote. That's not exactly
24 accurate.

25 MR. SPIRO: Well, again, exactly accurate is --

1 well, one thing I just point out, this is linked to then a
2 blog post, right? There's a limit of characters in Twitter.
3 This is linked to a blog post that explains all of this,
4 that's explicit, that goes into detail, right? And the
5 whole thing --

6 THE COURT: Well, the details explaining why, what
7 the advantage is and the fact that it's a premium -- 20
8 percent premium, I'm not going to do more than 20 percent
9 myself. The proposal will go -- finalize through vote of
10 shareholders.

11 So there's nothing in there that suggests, well, we've
12 got about five hurdles to get over before we get to the
13 shareholder vote.

14 MR. SPIRO: Well --

15 THE COURT: You know, there's going to be due
16 diligence of the Saudi -- and come to some agreement with
17 them, there's going to be regulatory -- you know, all sorts
18 of stuff. But that's not mentioned.

19 MR. SPIRO: Well, what is mentioned is we would
20 like to structure this, it's not even structured yet, there
21 are steps ahead. A "final decision," quote-unquote, has not
22 been met. We're investigating a range of potential
23 structures and options. He had said moments before, "I am
24 considering."

25 So it's not even a fully baked -- what he's saying is

1 what this is ultimately coming down to is what the
2 shareholders think. And he is saying within the same exact
3 tweet, after saying "I'm considering it," "I haven't made a
4 decision. I am considering it." Okay?

5 The ultimate decision is going to be that of the
6 shareholders. This blog post reads as if this is a
7 forward-looking-maybe, in every material respect. It says
8 it five times in five different ways.

9 We don't have the structure yet. We haven't figured
10 out all the details. Ultimately at the end of the rainbow,
11 this is going to come down to a shareholder vote.

12 THE COURT: All right. Let me hear the response.

13 Mr. Porritt?

14 MR. PORRITT: Thank you, your Honor.

15 Mr. Musk said that investor support is confirmed, once
16 again in the past tense. He had not spoken to a single
17 outside investor about a potential transaction at \$420 per
18 share. I mean I do know much clearer you can get.

19 And listening to counsel for defendants, they never put
20 out any evidence that contradicts that or gives any possible
21 justification for that statement.

22 Investor support was not confirmed. I mean you cannot
23 confirm something with support when you don't speak to the
24 supporter. It's as simple as that. He had no basis
25 whatsoever for making the statement, and the statement is

1 false. And in fact we know it's false because he later told
2 the board that it was false, that in fact the investor
3 support was not there. And he told the SEC quite
4 explicitly.

5 And this is at -- if I may, at page 258 of this
6 transcript of his SEC testimony: I was wrong about the
7 desire or the interest in the existing shareholders to go
8 private. That was incorrect.

9 And he had previously told the board at the board
10 meeting on August 23rd, as reflected in the minutes, Exhibit
11 101, he had learned in recent weeks following his
12 announcement, including but not limited to the negative
13 views of many of the company's current stockholders
14 regarding the prospect of the company going private, and
15 that many of them -- many of Tesla's investors preferred
16 that the company to stay public.

17 So it's simply undisputable, in our opinion, that
18 that's a false statement and that Mr. Musk cannot have
19 confirmed investor support, because if he had confirmed it,
20 he would have found out that the investor support was not
21 there.

22 If I may briefly talk about the question of materiality
23 which defendants appear to have brought up. To the extent
24 that they are arguing that the tweets on August 7th,
25 "funding secured, investor support is confirmed" and the

1 only reason it's contingent is because it's subject to a
2 shareholder vote are not material, really just totally
3 misunderstands the concept of materiality as established by
4 the Supreme Court in Basic v. Levinson, TSC v. Northway.
5 And it's been well-established ever since then.

6 It just has to change the overall -- the total mix of
7 information available to a reasonable investor, considered
8 by a reasonable investor in making an investment decision.

9 And the suggestion that Elon Musk tweeting "funding
10 secured" or "investor support is confirmed" for going
11 private transaction does not somehow alter the total mix of
12 information is really utterly unreal and it's not supported
13 by their own expert. It's not supported by any evidence.

14 The Court rightly pointed to the market reaction on
15 August 7th, which shows an immediate, instantaneous, within
16 a second, increase in price in responding to this. It led
17 to a trading halt on the NASDAQ, and then was followed over
18 the next 10 days by over 2400 news articles.

19 It was the most followed news story -- I think we all
20 remember it. But even so, our expert, in his report that
21 was submitted to you, went through a database and counted
22 the number of reports that were in there, over 2400 --

23 THE COURT: What about the point that the reaction
24 was to his announcement of an intent, not so much the
25 securing of the funding but just the fact that he's

1 intending or seriously looking at going private, which is a
2 big deal, and that he's got a number on it, 420?

3 That's going to make news, that's going to influence
4 people. Even if he never said anything about funding, the
5 argument is going to be that would have impacted the market.

6 MR. PORRITT: Well, I have two responses, your
7 Honor.

8 First of all, if you look at the news items, they all
9 mentioned the words "funding secured." If you look at the
10 analyst's reports that we submitted, "funding secured" --

11 THE COURT: Right. But we don't know -- I mean
12 why is there a question of fact as to which portion of that
13 sentence was the one that really moved the market?

14 I understand your argument. It sure looks like a
15 material part of the mix of information that a reasonable
16 investor would consider, funding secured versus no funding.
17 But, you know, we don't know.

18 MR. PORRITT: Well, fundamentally that's a loss
19 causation item, and that's not subject of this motion.

20 So of course, yes, there are other elements to the
21 statements, and there was more information coming into the
22 market during the class period, even though it's a short
23 class period, 10 days.

24 So the degree to which the market moved, how much the
25 market moved in response to the particular statements and

1 statements that may be found to be false or fraudulent, and
2 those that weren't, that is going to be a question for the
3 jury. We concede that. We haven't moved on that issue.

4 And that -- their expert offers a loss causation
5 report. Their expert never mentioned the word
6 "materiality." There was no opinion out there from their
7 expert saying that the August 7th tweets are immaterial.

8 So this argument is, as I say, I think fundamentally
9 misunderstands the whole test for materiality. I don't
10 think there can really -- there's really no other -- you
11 know, this is really the financial equivalent of, you know,
12 shouting fire in a crowded cinema.

13 It's hard to I think -- if these statements are not
14 material, it's hard to think what a public statement
15 regarding a public company --

16 THE COURT: So you're asking for summary judgment
17 on the question of materiality, not necessarily of the
18 question of reliance or loss causation?

19 MR. PORRITT: Well, we also move on the question
20 of reliance. We do not move on loss causation.

21 And I know those three concepts are interrelated, and
22 there is a lot of very often I think not particularly
23 illuminating jurisprudence on the question of how they
24 relate to one another and passing them through both the
25 class certification and a motion to dismiss and summary

1 judgment.

2 So I agree that they all mix together, but I think that
3 we have sufficiently differentiated them now. I think these
4 statements are clearly material, so material should be -- we
5 should receive summary judgment on materiality.

6 I think if they're material, the market was efficient,
7 I think we've established reliance, the presumption of
8 reliance. And I don't think defendants have any evidence to
9 rebut that. They've not come forward with any evidence to
10 rebut that.

11 And then there are issues of loss causation, which is
12 how much of the market reaction that could be measured, you
13 know, is attributable as caused by the tweets and by the
14 forward and how much of that is recoverable by the class.

15 And so those are questions that would be ultimately
16 decided by the jury, guided by expert testimony.

17 THE COURT: All right. Let me hear the response
18 on materiality, briefly.

19 MR. SPIRO: Yes. And if I could just take a step
20 back and respond to one other piece of this, which is just,
21 again, if you look at the blog post, what's clear about this
22 is one thing that is not certain -- we have many steps to
23 do, this is still in an early phase, but one thing that is
24 not certain is shareholder approval, right? That's what
25 that really means, is that -- when it says "contingent upon

1 shareholder approval," because he talks about all the other
2 steps.

3 The other thing is that plaintiffs' reading of it is
4 internally inconsistent. I think this is very important.
5 This is why juries exist, because what they're saying in one
6 breath is: Investor support is confirmed. You see, he's
7 telling everybody that the investors are supporting this.

8 And then in the same sentence, they're saying: Oh,
9 look, he's saying it's contingent on investor support in
10 this absolute sense.

11 Well, if he really is saying what they want him to
12 regarding investor support being confirmed, then how could
13 the same contingency be the only contingency? It's not as
14 they say it and it's not what a reasonable jury would
15 conclude.

16 In terms of materiality --

17 THE COURT: Well, wait a minute. That assumes --
18 investor support I would assume was meant to be directed
19 toward the prospective investor, whether it's the Saudi PIF
20 or whoever, not the shareholders.

21 MR. SPIRO: Well, I don't know. We don't know and
22 a jury could interpret it as either.

23 The way I understood it, at least at one point, is the
24 plaintiffs arguing that, look, we have investor support, as
25 if what he's telling the marketplace is, look, we have -- I

1 mean investors are shareholders, that we have all --

2 THE COURT: No, that doesn't make sense.

3 MR. SPIRO: I agree that it doesn't make sense. I
4 agree.

5 THE COURT: When it says investor support is
6 confirmed, the only reason why it's not certain, it's on
7 shareholders, it's obviously talking about two things.

8 You've got one-half tab down because that part is
9 confirmed, it's like the investor, whoever is going to
10 invest. But we still need the existing shareholder.

11 I mean that seems obvious you're talking about two
12 different -- the first reference to "investor support" is
13 not the shareholders. That wouldn't make any sense to say,
14 well, it's confirmed but we've got to get their vote.

15 MR. SPIRO: I -- let's just -- I will just agree
16 that I agree it doesn't make any sense. And I agree that
17 there is some internal inconsistency there to suggest that
18 one means something absolute and one means something
19 absolute in a direction that I think is at least contrary to
20 it.

21 But the other point I wanted to make is that the fact
22 that the market reacts by the stock going up when more
23 information, more detail is revealed on the 13th is evidence
24 of -- your Honor rightly pointed out, what's good for the
25 stock price -- if you want to look at the stock price to

1 glean other things about what's really going on here, it
2 works in both directions.

3 Well, it certainly does and on the 13th when more
4 information comes in, the stock goes up. It does not go
5 down. It does not react as if it's been injected with new
6 information.

7 It reacts as if the market understood Mr. Musk's words
8 to be what they were. And the only people that were in that
9 room when this conversation had with the PIF and its
10 three -- it's three different witnesses under oath. The
11 only ones that have come in have supported Mr. Musk's
12 assertion as to what happened in that meeting and that those
13 words that he spoke were consistent with what happened in
14 that meeting.

15 No one else has testified or laid a finger on that
16 interpretation, nobody from the PIF and nobody from
17 plaintiffs' side.

18 In terms of additional comments on materiality, if
19 we're going to move to materiality, again, your Honor -- and
20 I've said it before, the question is what's material. None
21 of Mr. Musk's deals that have occurred, the funding of it or
22 that funding is or isn't at issue is not what's material
23 about them just as a general matter.

24 But here it's clear that Mr. Musk's words and the power
25 that they have and the idea that Tesla would transform into

1 a private entity is what the market is reacting to. And
2 these are expert issues that still need to be fully vetted
3 and discovered as -- plaintiffs' counsel keeps pointing out,
4 well, the experts said this or the experts said that.

5 I feel an obligation to tell the Court, the expert
6 witnesses aren't even done being deposed yet in this case.
7 So the idea that -- I don't leave the Court with the
8 impression, well, the experts have said one thing absolutely
9 never to change.

10 Not only have they not testified at trial, they haven't
11 even been deposed to much of what plaintiffs' counsel is
12 speaking to.

13 Materiality is almost always a question to the jury, as
14 is all of these questions. I mean it is -- you find almost
15 no cases that take this out of the providence of the jury,
16 any of these issues, frankly. But materiality is almost
17 always -- and all that plaintiffs say basically is a line in
18 their brief that says, well, it must have been material.
19 And they don't really ever address the issue of which part
20 of it is material if any of it is material.

21 They don't address that. There's nothing. There's
22 nothing in the record they've done, no study, no expert
23 opinion, nothing to tease this out. And so they certainly
24 can't move for summary judgment on it, in our view.

25 THE COURT: Thank you, Counsel. I'll take it

1 under submission. I appreciate it. It's helpful.

2 MR. PORRITT: Thank you, your Honor.

3 MR. SPIRO: Thank you, your Honor.

4 (Proceedings adjourned at 2:31 p.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

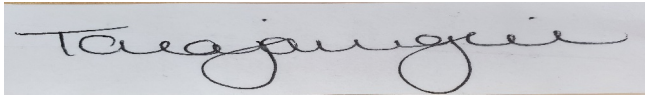
24

25

1 CERTIFICATE OF TRANSCRIBER

2
3 I certify that the foregoing is a true and correct
4 transcript, to the best of my ability, of the above pages of
5 the official electronic sound recording provided to me by
6 the U.S. District Court, Northern District of California, of
7 the proceedings taken on the date and time previously stated
8 in the above matter.

9 I further certify that I am neither counsel for,
10 related to, nor employed by any of the parties to the action
11 in which this hearing was taken; and, further, that I am not
12 financially nor otherwise interested in the outcome of the
13 action.

14 

15
16 Echo Reporting, Inc., Transcriber

17 Wednesday, March 16, 2022
18
19
20
21
22
23
24
25